

Exhibit B

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re:

4 MOTORS LIQUIDATION COMPANY, et al.,
5 f/k/a General Motors Corp., et al.,

6 Debtors.

7 Cast No.: 09-50026 (MG)

8 November 8, 2017

9 10:02 a.m.

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11
12
13 DEPOSITION of EDWARD
14 WEISFELNER, held at the offices of
15 BROWN RUDNICK LLP, 7 Times Square, New
16 York, New York before Wayne Hock, a
17 Notary Public of the State of New York.
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<p style="text-align: right;">Page 18</p> <p>1 more specific?</p> <p>2 A. Not as to each and every one</p> <p>3 of the ancillary documents. I think it</p> <p>4 was sometime during the period of my</p> <p>5 best guess is --</p> <p>6 Q. Please don't guess.</p> <p>7 A. Well, then I don't know.</p> <p>8 Q. Are there documents you could</p> <p>9 review that would enable you to answer</p> <p>10 this question more specifically?</p> <p>11 A. My guess is I recall seeing a</p> <p>12 series of transmittal e-mails that may</p> <p>13 more specifically address the timing of</p> <p>14 when all the parties signed off on all</p> <p>15 of the documents that constitute</p> <p>16 Exhibit 3.</p> <p>17 Q. Okay.</p> <p>18 We may get to those in a</p> <p>19 moment.</p> <p>20 Let me ask you the same</p> <p>21 question or same series of questions,</p> <p>22 please, about Exhibit J to your</p> <p>23 declaration.</p> <p>24 What is that?</p> <p>25 A. Exhibit J appears to be the</p>	<p style="text-align: right;">Page 20</p> <p>1 videographer or the court reporter</p> <p>2 to activate our screen. It's just</p> <p>3 like you have to do it with a mouse</p> <p>4 on your computer, sometimes it goes</p> <p>5 to a blank screen on this.</p> <p>6 There you go. Thank you very</p> <p>7 much. I don't know if we can count</p> <p>8 on your end when it does that, but</p> <p>9 keep an eye. I'll try not to</p> <p>10 interrupt.</p> <p>11 MR. KARLAN: Are you good now?</p> <p>12 MR. GONZALES: Yes, we are.</p> <p>13 Thank you.</p> <p>14 Q. Was Exhibit K to your</p> <p>15 declaration an exhibit to the</p> <p>16 settlement agreement?</p> <p>17 A. I believe it was.</p> <p>18 Q. When were the -- when was the</p> <p>19 text of Exhibit K finally agreed upon?</p> <p>20 A. Probably within the same time</p> <p>21 frame as the other exhibits you've</p> <p>22 asked me about, although my</p> <p>23 recollection is that the text of this</p> <p>24 particular exhibit may have preceded</p> <p>25 text of the form orders. In other</p>
<p style="text-align: right;">Page 19</p> <p>1 parties' agreement on the form of a</p> <p>2 claims estimation order that they would</p> <p>3 submit and ask the court to enter.</p> <p>4 Q. Was Exhibit J, the draft</p> <p>5 proposed claims estimate order, an</p> <p>6 exhibit to the settlement agreement?</p> <p>7 A. I believe it was.</p> <p>8 Q. When was the text of Exhibit</p> <p>9 J finally agreed upon?</p> <p>10 A. The same answer as I gave you</p> <p>11 for the preceding exhibit.</p> <p>12 Q. What is Exhibit K to your</p> <p>13 declaration, please?</p> <p>14 A. This was the joint motion</p> <p>15 between and among the signatory parties</p> <p>16 to the settlement agreement in effect</p> <p>17 asking the court to approve the</p> <p>18 settlement agreement and to estimate</p> <p>19 the aggregate allowed general unsecured</p> <p>20 claims.</p> <p>21 MR. GONZALES: Mitch, this is</p> <p>22 Rudy Gonzales. Excuse me for just</p> <p>23 one moment.</p> <p>24 MR. KARLAN: Sure.</p> <p>25 MR. GONZALES: Ask the</p>	<p style="text-align: right;">Page 21</p> <p>1 words, agreement on the exact text may</p> <p>2 have come before agreement on what I'll</p> <p>3 call some of the other ancillary</p> <p>4 exhibits.</p> <p>5 Q. Now, on page thirty-one of</p> <p>6 Exhibit K to your declaration begins</p> <p>7 the signature block for the document.</p> <p>8 Do you see that?</p> <p>9 A. No.</p> <p>10 Where am I looking again?</p> <p>11 Q. Page thirty-one.</p> <p>12 A. Of?</p> <p>13 Q. Exhibit K to your</p> <p>14 declaration.</p> <p>15 A. Exhibit K to my declaration</p> <p>16 and now page thirty-one. This is the</p> <p>17 motion itself. I see thirty-one, yes.</p> <p>18 Q. Do you see that the document</p> <p>19 was to be at some point signed by you</p> <p>20 or someone from your firm?</p> <p>21 A. I see that the signature</p> <p>22 block is set up for either myself or</p> <p>23 Mr. Steel from Brown Rudnick.</p> <p>24 Q. And on the copy of this</p> <p>25 document that is attached to your</p>

<p style="text-align: right;">Page 22</p> <p>1 declaration, the signature line says 2 slash S slash draft. 3 Do you see that? 4 A. I see that. 5 Q. What is indicated by that? 6 A. I don't know. 7 Q. What is it anticipated at 8 some point that document would be 9 signed? 10 A. If it wasn't, in fact, 11 signed, the clear anticipation was that 12 it was going to be signed, yes. 13 Q. Is it your testimony that it 14 was signed? 15 A. No, I don't know if it was 16 signed or not. 17 Q. Would you go back, please, to 18 Exhibit H which is what you've 19 described as the agreement itself. 20 A. Exhibit H. 21 Q. Yes, sir. 22 A. Okay. I'm there. 23 Q. Would you turn to page 24 nineteen of Exhibit H, please. 25 A. Yes, sir, I'm there.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Would you look at Exhibit P 2 to your declaration, please. 3 A. I'm there. 4 Q. Can you tell me what this is, 5 please. 6 A. Yes, this was the agreed-upon 7 form of the motion seeking court 8 approval of the notice procedures that 9 the parties had otherwise agreed to. 10 Q. Was this Exhibit P to your 11 declaration on exhibit to the 12 settlement agreement? 13 A. I believe it was, although 14 I'm not certain. 15 Q. When was the text of this 16 document finally agreed upon? 17 A. The same time frame, early 18 August sometime before the I want to 19 say 12th or 13th of August. But again, 20 it could have been among the latter 21 documents, the final wordsmithing of 22 which came after the more substantive 23 documents. 24 Q. Does that mean that you can't 25 say whether this document was finalized</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. On the copy of this document 2 that is attached to your declaration, 3 all of the signature lines on pages 4 nineteen and twenty are blank; is that 5 right? 6 A. On this version, yes. 7 Q. Were these signature lines 8 ever filled in, that is did anybody 9 ever sign this? 10 A. I can't respond for each and 11 every signature block. The answer is I 12 don't know. 13 Q. Did you ever sign it? 14 A. I don't recall. 15 Q. Did you -- have you looked 16 for any copies of this document that 17 have your signature on them? 18 A. No, I have not. 19 Q. Okay. 20 Do you know whether -- 21 MR. KARLAN: Withdrawn. 22 Q. Did you ever see any 23 signatures of anybody else on this 24 document? 25 A. Not that I can recall.</p>	<p style="text-align: right;">Page 25</p> <p>1 before or after the 13th of August? 2 A. I can't say with specificity 3 on exactly what date. My best 4 recollection is that, as with all of 5 the documents constituting Exhibit 3, 6 they were done and signed off on I 7 think somewhere around the ninth, 8 tenth, eleventh, or twelfth, somewhere 9 in that time frame. 10 Q. Would you turn, please, to 11 page -- let's look at page eleven, 12 please, of Exhibit P. 13 A. I see it. 14 Q. Was a signature ever placed 15 on the signature line on page eleven, 16 to your knowledge? 17 A. I don't know but I don't 18 think so. 19 Q. And then if you'd just flip a 20 few more pages on that same document, 21 there's a page that's blank but says 22 Exhibit A. 23 Do you see that? 24 A. Yes. 25 Q. And the next page has an</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 order, a drafted order?</p> <p>2 A. Yes.</p> <p>3 Q. And then if we go to Exhibit</p> <p>4 B, just keep flipping pages.</p> <p>5 A. Exhibit?</p> <p>6 Q. B.</p> <p>7 A. Oh, B to this document.</p> <p>8 Yeah.</p> <p>9 Q. Do you see it says, "long</p> <p>10 form notice?"</p> <p>11 A. I do.</p> <p>12 Q. Do you know where the long</p> <p>13 form notice is?</p> <p>14 A. Do I know where it is?</p> <p>15 Q. Yes, sir.</p> <p>16 A. I'm sure I could find it.</p> <p>17 Q. You believe it exists?</p> <p>18 A. Oh, yeah, I know it exists.</p> <p>19 Q. Do you know why it's not</p> <p>20 included in your declaration?</p> <p>21 A. I just think -- the answer is</p> <p>22 I don't know why it's not included in</p> <p>23 the declaration.</p> <p>24 Q. Okay.</p> <p>25 Staying with Exhibit P on</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Would you look at paragraph</p> <p>2 number one on page two.</p> <p>3 A. Yes.</p> <p>4 Q. It reads, "on August," and</p> <p>5 then there are brackets with a blank,</p> <p>6 "2017, after good faith arm's length</p> <p>7 negotiations, the signatory plaintiffs</p> <p>8 and the GUC Trust entered into the</p> <p>9 settlement agreement."</p> <p>10 A. Yes.</p> <p>11 Q. Did you ever see a version of</p> <p>12 Exhibit P in which that date was filled</p> <p>13 in?</p> <p>14 A. I don't think so.</p> <p>15 Q. Was there ever agreement with</p> <p>16 anyone on GUC Trust's side as to what</p> <p>17 date was going to be filled in in that</p> <p>18 blank?</p> <p>19 A. I believe the parties</p> <p>20 contemplated that, once we got signoff</p> <p>21 from Gibson Dunn on the final form of</p> <p>22 all of the documents, whatever date</p> <p>23 that was, that the brackets could be</p> <p>24 filled in utilizing that date.</p> <p>25 MR. KARLAN: Move to strike.</p>
<p style="text-align: right;">Page 27</p> <p>1 your declaration, would you look at</p> <p>2 page two.</p> <p>3 A. Of?</p> <p>4 Q. Exhibit P.</p> <p>5 A. I'm there.</p> <p>6 Q. Do you see paragraph number</p> <p>7 one on page two?</p> <p>8 A. No.</p> <p>9 Q. Let's see.</p> <p>10 I'm on Exhibit P. The first</p> <p>11 page is blank and just says Exhibit P</p> <p>12 on it, nothing else.</p> <p>13 A. Oh, I was in the wrong</p> <p>14 exhibit. I'll try taking the clip off</p> <p>15 this time.</p> <p>16 MR. WISSNER-GROSS: Can you</p> <p>17 restate what the question is?</p> <p>18 MR. KARLAN: Let him get to</p> <p>19 the page.</p> <p>20 THE WITNESS: Let me get to P</p> <p>21 and then I can better listen.</p> <p>22 I'm at P.</p> <p>23 Q. Would you look at page two of</p> <p>24 P, please.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Let me ask you to try to</p> <p>2 focus on the question that I'm asking.</p> <p>3 MR. WISSNER-GROSS: Hold on,</p> <p>4 he's giving you an appropriate</p> <p>5 response --</p> <p>6 MR. KARLAN: It's just a</p> <p>7 motion, it's just a motion, I'm</p> <p>8 not --</p> <p>9 MR. WISSNER-GROSS: You don't</p> <p>10 have to lecture me, sir.</p> <p>11 MR. KARLAN: Well, then stop</p> <p>12 talking.</p> <p>13 MR. WISSNER-GROSS: You know</p> <p>14 something? You can stop lecturing</p> <p>15 me. I've been listening to all</p> <p>16 your questions. I haven't</p> <p>17 interposed objections. When I see</p> <p>18 fit to interpose an objection, I</p> <p>19 will.</p> <p>20 MR. KARLAN: This isn't an</p> <p>21 objection. I don't recognize this.</p> <p>22 I have never seen it before.</p> <p>23 Q. Did anyone from the GUC Trust</p> <p>24 ever tell you what date they wanted to</p> <p>25 go in that blank?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. Tell me? No.</p> <p>2 Q. To your knowledge, did anyone</p> <p>3 from the GUC Trust ever tell you --</p> <p>4 MR. KARLAN: Withdrawn.</p> <p>5 Q. To your knowledge, did anyone</p> <p>6 from the GUC Trust ever tell anyone</p> <p>7 from your law firm what date should go</p> <p>8 in that blank?</p> <p>9 A. I think the assumption among</p> <p>10 all of the parties was that, once the</p> <p>11 deal documents were final legal signed</p> <p>12 off on, that was the date that could be</p> <p>13 inserted into the brackets.</p> <p>14 Q. But no one from my firm ever</p> <p>15 told you that; is that fair?</p> <p>16 A. No one from your firm ever</p> <p>17 personally told me.</p> <p>18 Q. And to your knowledge, no one</p> <p>19 from my firm ever told anyone from your</p> <p>20 firm?</p> <p>21 A. I don't have any knowledge</p> <p>22 one way or the other.</p> <p>23 Q. Can we go back, please, to</p> <p>24 Exhibit H, to your declaration.</p> <p>25 A. I am there.</p>	<p style="text-align: right;">Page 32</p> <p>1 ever told you that; is that fair?</p> <p>2 A. No one from Gibson Dunn ever</p> <p>3 -- they told me exactly what I just</p> <p>4 said they told me, but no one gave me a</p> <p>5 specific date to fill in.</p> <p>6 Q. Who from Gibson Dunn made the</p> <p>7 statement to you that you're</p> <p>8 attributing to Gibson Dunn?</p> <p>9 A. All of them, every lawyer at</p> <p>10 Gibson Dunn that worked on this deal</p> <p>11 and everyone on our side had an</p> <p>12 identical understanding that the</p> <p>13 agreement would be dated as early as</p> <p>14 the date when the final documentation</p> <p>15 had all been signed off on.</p> <p>16 Q. And putting aside for the</p> <p>17 moment any assumptions you may have</p> <p>18 made about what other people were</p> <p>19 thinking, did, for example, Mr.</p> <p>20 Williams from my firm ever say to you</p> <p>21 what date should go in that blank?</p> <p>22 A. Not to my recollection, no.</p> <p>23 Q. To your knowledge, did he</p> <p>24 ever say it to anyone else from your</p> <p>25 firm?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Would you look at page one of</p> <p>2 the exhibit.</p> <p>3 A. Yes.</p> <p>4 Q. Do you see the very first</p> <p>5 line of text reads, "this settlement</p> <p>6 agreement," which is defined as the</p> <p>7 agreement, "dated as of August blank,</p> <p>8 2017 among."</p> <p>9 Do you see that?</p> <p>10 A. I see that.</p> <p>11 Q. Have you ever seen a version</p> <p>12 of this document that has that date</p> <p>13 filled in?</p> <p>14 A. I don't think so.</p> <p>15 Q. Did anyone representing the</p> <p>16 GUC Trust ever tell you what date they</p> <p>17 believed should go in that blank?</p> <p>18 A. The same answer to the</p> <p>19 questions you've posed with regard to</p> <p>20 the prior exhibit. We all of us</p> <p>21 assumed that the date that could go</p> <p>22 into the agreement could be as early as</p> <p>23 the date when all the parties signed</p> <p>24 off on all of the operative documents.</p> <p>25 Q. But no one from Gibson Dunn</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I couldn't tell you</p> <p>2 specifically one way or the other.</p> <p>3 Q. Did Mr. Martorana ever tell</p> <p>4 you what date he thought should go in</p> <p>5 that blank?</p> <p>6 A. Not that I can recall.</p> <p>7 Q. To your knowledge, did he</p> <p>8 ever say that to anyone else at your</p> <p>9 firm?</p> <p>10 A. I don't know.</p> <p>11 Q. Would you look at page</p> <p>12 fifteen of Exhibit H to your</p> <p>13 declaration, please.</p> <p>14 A. I'm at page fifteen.</p> <p>15 Q. Would you look at section</p> <p>16 3.1.</p> <p>17 Would you follow along as I</p> <p>18 read the first sentence? The title is</p> <p>19 Settlement Effective Date. "This</p> <p>20 agreement shall become effective and</p> <p>21 binding on the parties on the date on</p> <p>22 which this agreement is fully executed</p> <p>23 by each of the parties."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

9 (Pages 30 - 33)

<p style="text-align: right;">Page 34</p> <p>1 Q. What date is that?</p> <p>2 A. What date is what?</p> <p>3 Q. What date was this agreement</p> <p>4 fully executed between the parties?</p> <p>5 A. I don't believe so it was.</p> <p>6 Q. Would you look at section</p> <p>7 3.2(b) on page fifteen of Exhibit H to</p> <p>8 your declaration which is entitled</p> <p>9 Termination By the GUC Trust.</p> <p>10 A. I'm there.</p> <p>11 Q. Would you follow along with</p> <p>12 me? I'm just going to read the first</p> <p>13 few clauses.</p> <p>14 "Termination by the GUC</p> <p>15 Trust. This agreement shall be</p> <p>16 terminable at the option of the GUC</p> <p>17 Trust in the event that; A, the notice</p> <p>18 order is not entered on or before</p> <p>19 thirty days after execution of this</p> <p>20 settlement agreement," and it goes on</p> <p>21 from there.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. What date was thirty days</p> <p>25 after the execution of this settlement</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Bromberg Esserman and Plifka?</p> <p>2 A. That's it.</p> <p>3 Were designated bankruptcy</p> <p>4 counsel for the economic loss co-lead</p> <p>5 plaintiffs in the MDL.</p> <p>6 Q. Let me see if we can do this</p> <p>7 more swiftly, and I apologize that I'm</p> <p>8 clumsy about this.</p> <p>9 Can you look at page nineteen</p> <p>10 of Exhibit H which is the signature</p> <p>11 blocks.</p> <p>12 A. I'm there.</p> <p>13 Q. So under your firm's name, it</p> <p>14 says on behalf of the plaintiffs.</p> <p>15 A. Right.</p> <p>16 Q. Who is that?</p> <p>17 A. It's a defined term in the</p> <p>18 agreement.</p> <p>19 Q. Okay. Let's look at that</p> <p>20 then.</p> <p>21 Would you look at page nine</p> <p>22 of Exhibit H, section 1.45.</p> <p>23 Tell me when you're on that</p> <p>24 page.</p> <p>25 A. I'm at that page and at that</p>
<p style="text-align: right;">Page 35</p> <p>1 agreement?</p> <p>2 A. This is pretty funny. As far</p> <p>3 as I know, the agreement wasn't</p> <p>4 executed.</p> <p>5 Q. Thank you.</p> <p>6 Who were you representing in</p> <p>7 negotiating Exhibit H?</p> <p>8 MR. KARLAN: Actually, I'm</p> <p>9 sorry, let me withdraw the</p> <p>10 question.</p> <p>11 Q. Were you involved in the</p> <p>12 negotiations of Exhibit H?</p> <p>13 A. Yes, I was.</p> <p>14 Q. And who else from Brown</p> <p>15 Rudnick was involved?</p> <p>16 A. Primarily Howie Steel.</p> <p>17 Q. Anyone else?</p> <p>18 A. We had some associate</p> <p>19 assistance but not in the negotiations,</p> <p>20 I'd say in the drafting.</p> <p>21 Q. Okay.</p> <p>22 Who were you and Mr. Steel</p> <p>23 representing in the negotiations?</p> <p>24 A. We together with the law firm</p> <p>25 of Stutzman --</p>	<p style="text-align: right;">Page 37</p> <p>1 definition.</p> <p>2 Q. Can you follow along? I'm</p> <p>3 going to read the first parts of it.</p> <p>4 "Plaintiffs means the</p> <p>5 ignition switch plaintiffs, the</p> <p>6 non-ignition switch plaintiffs, and the</p> <p>7 preclosing accident plaintiffs</p> <p>8 including all plaintiffs, whether named</p> <p>9 or unnamed, including unnamed members</p> <p>10 of a putative class covered by any of</p> <p>11 the late claims motions, all plaintiffs</p> <p>12 represented by counsel that is</p> <p>13 signatory hereto and any other party</p> <p>14 who, one, as of July 10, 2009 suffered</p> <p>15 an economic loss by reason of their</p> <p>16 ownership or lease of an old GM vehicle</p> <p>17 with an ignition switch defect included</p> <p>18 in recall number 14V-047," and it goes</p> <p>19 on from there to expand the definition</p> <p>20 even more so.</p> <p>21 Were you representing all of</p> <p>22 the people I've just described?</p> <p>23 A. No.</p> <p>24 When you say you just</p> <p>25 described, to the extent that you've</p>

<p style="text-align: right;">Page 38</p> <p>1 included the balance of the 2 definition -- 3 Q. Yes. 4 A. Then that -- the definition 5 of plaintiffs in 1.45 went beyond the 6 scope of the entities that I believe I 7 was representing. 8 Q. Okay. 9 Then if we could please go 10 back to the signature page which is 11 nineteen, under yours and Mr. Steel's 12 name it says title Designated Counsel 13 For the Ignition Switch Plaintiffs and 14 Certain Non-Ignition Switch Plaintiffs 15 in the Bankruptcy Court. 16 Do you see that? 17 A. Yes, I do. 18 Q. How many such people are 19 there that you were representing in 20 that title? 21 A. Many. 22 Q. And were you hoping to act on 23 behalf of a class that had not yet been 24 certified? 25 A. No.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. When you refer to the 2 economic loss co-lead counsel, and 3 please forgive me that I'm going to 4 little slowly here, is that Stutzman 5 firm or is that somebody else? 6 A. No, it's the Hagens Berman 7 firm and the Lieff Cabraser firm. 8 Q. In your understanding, is the 9 status of the Stutzman firm identical 10 to your status? 11 A. Yes. 12 Q. Do you have a written 13 engagement agreement with the Hagens 14 firm? 15 A. The answer is I don't recall. 16 Q. Okay. 17 Do you have a written 18 engagement agreement with anybody in 19 connection with the Motors liquidation 20 case? 21 A. If it's not with Steve Berman 22 or Liz Cabraser's firm, then I don't 23 have one. But I just don't recall 24 whether we have a written engagement 25 agreement from either. I think we do.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Were you acting on behalf of 2 a class that was certified? 3 A. No. 4 Q. With -- 5 A. Not for the purposes of this 6 settlement agreement. 7 Q. Okay. 8 So were you acting on behalf 9 -- did you believe you were acting on 10 behalf of all the people described in 11 that title? 12 A. No. 13 Q. Can you tell me with any more 14 specificity than you've already had who 15 you thought you were representing in 16 negotiating this agreement? 17 A. Sure. 18 To start with, I was 19 representing the economic loss co-lead 20 counsel in the MDL as I've previously 21 indicated, and beyond that I believed I 22 was through that representation 23 representing the interests of, at a 24 minimum, the named plaintiffs on the 25 economic loss side of the MDL.</p>	<p style="text-align: right;">Page 41</p> <p>1 In fact, now that I think about it, I'm 2 sure we do. 3 Q. Okay. 4 A. And again, the technical 5 detail, since, you know, it involved an 6 MDL and their co-lead position, I'm not 7 sure what the parties to that retention 8 agreement are but I know that it covers 9 our work and our entitlement at some 10 time to get paid. 11 Q. When you say you don't know 12 who it's with, on one side it's with 13 Brown Rudnick? 14 A. Correct. 15 Q. And on the other side, is it 16 your testimony that it's either or both 17 of Hagens and Lieff? 18 A. I can't be sure because 19 there's an entire organizational 20 structure on the plaintiff's side of 21 the MDL and I'm not sure if it's with 22 the executive committee, with the -- 23 I'm just not sure who the other side of 24 the engagement letter it was with. 25 Q. Do you know, and I don't mean</p>

<p style="text-align: right;">Page 42</p> <p>1 to infer that you should, I'm just 2 trying to test so I know when we're 3 done, do you know who the Hagens firm 4 represents? 5 A. I know that they were 6 appointed by Judge Furman as co-lead 7 counsel in the MDL. I know that they 8 have or are involved in other 9 GM-related litigation that I think is 10 outside the MDL, and I've come to know 11 that they represent certain named 12 plaintiffs in litigation against GM. 13 Q. Is either the Hagens firm or 14 the Lieff firm -- and I apologize if 15 I'm mispronouncing those firms' names 16 -- certified class counsel in the MDL? 17 A. I don't know what that means 18 so I can't answer it. They were 19 appointed co-lead counsel by Judge 20 Furman at a hearing that I was present 21 at. Beyond that I don't know. 22 Q. Do you understand that Judge 23 Furman gave them administrative 24 responsibilities only? 25 A. No, I don't understand that.</p>	<p style="text-align: right;">Page 44</p> <p>1 the terms of the settlement order are 2 supposed to be. 3 Do you see that? 4 A. I believe so. 5 Q. And one of the terms is that 6 it has to impose, "a complete and 7 irrevocable waiver and release on the 8 part of all plaintiffs with respect to 9 any and all rights." 10 Do you see that? 11 A. I don't see that specifically 12 but if you give me a little bit 13 better -- 14 Q. I'm sorry, I apologize. Line 15 four. 16 A. Of paragraph B? 17 Q. Correct. 18 A. "Imposes a complete and 19 irrevocable waiver and release," yes. 20 Q. Did you have authority from 21 any claimant to give such a release? 22 A. No, the authority would stem 23 from all claimants getting notice and 24 an opportunity to be heard and the 25 authority would emanate from the</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Do you believe that Judge 2 Furman created an attorney-client 3 relationship for them with people 4 they've never met? 5 A. You're above my pay grade. 6 Q. Fair enough. 7 Exhibit H, and it will take 8 me a minute to find it, has the 9 releases in it; does it not? 10 A. I believe it does. But I'd 11 appreciate being -- 12 Q. I'm looking for them myself. 13 Give me a moment. 14 Would you look at page 15 eleven. 16 A. Yes. 17 Q. There's a little paragraph B 18 towards the top of the page. 19 A. Yes. 20 Q. Maybe you need to have the 21 context here. Turn back to page ten. 22 A. I don't think I'll need it. 23 Ask the question. 24 Q. Do you see in little B 25 there's language that describes what</p>	<p style="text-align: right;">Page 45</p> <p>1 court's entry of an order based on due 2 process afforded to all affected 3 parties. 4 Q. In your understanding of the 5 terms of Exhibit H, would ignition 6 switch plaintiffs have the right to 7 object at the 9019 hearing? 8 A. Absolutely. 9 Q. What obligations did you 10 believe the GUC Trust was undertaking 11 if we assume for the moment the 12 settlement agreement was enforceable? 13 A. They were undertaking any 14 number of obligations, more 15 definitively set forth in the agreement 16 itself. But off the top of my head, I 17 can tell you they had the obligation to 18 make available \$15 million in the event 19 that the settlement agreement were 20 approved, they had the obligation to 21 fund the cost of notice, which I know 22 was between five and six million and I 23 think we ultimately settled on six 24 million, they had the obligation to 25 support entry of the order approving</p>

<p style="text-align: right;">Page 46</p> <p>1 the settlement agreement, they had the 2 obligation to support entry of the 3 claims estimation order, and then they 4 had any number of ancillary obligations 5 which they've subsequently breached. 6 Q. Have you finished your 7 answer? 8 A. Yeah, I think so. 9 Q. Was it anticipated by you in 10 August of 2017 that manual ink 11 signatures would at some point be 12 placed on pages nineteen and twenty of 13 Exhibit H? 14 A. To the extent I ever thought 15 about it, yes. 16 Q. Why? 17 A. Why what? 18 Q. Why did you think that was 19 appropriate or necessary or desirable? 20 MR. WISSNER-GROSS: Objection. 21 MR. KARLAN: I'll withdraw the 22 question. 23 Q. Did you think that was 24 appropriate, necessary, or desirable? 25 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 think among them were significant ones, 2 was 3.6 which indicated in sum and 3 substance that none of the parties 4 directly or indirectly would proceed in 5 any manner against the other or take 6 any action inconsistent with the terms 7 of this agreement. And I certainly 8 think that the GUC Trust violated that 9 provision of the agreement. 10 Q. So while we're on 3.6 which 11 is entitled No Litigation, it, if it 12 were part of a final enforceable 13 contract, would have prohibited any 14 intended beneficiary of the agreement 15 from taking certain actions; correct? 16 A. I believe that's what it 17 reads, yes. 18 Q. Did you have the authority to 19 bind anybody to that agreement? 20 A. Again, from my perspective 21 with regard to anyone other than the 22 signatory parties, only after the court 23 approved the settlement agreement. But 24 with regard to the intended signatory 25 parties and in particular the GUC</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Why? 2 A. And the reasons were that 3 these were formal written pleadings 4 that were being filed with the federal 5 bankruptcy court on the docket for the 6 benefit of many hundreds of thousands 7 if not millions of potentially affected 8 parties and for any or all of that to 9 be a matter of record before the 10 bankruptcy court, I think that motions 11 and related papers including the 12 settlement agreement ultimately, as a 13 matter of record, as a ministerial act, 14 needed to be signed. 15 Q. Thank you. 16 Bear with me one second. I 17 need to get a document out. 18 Mr. Weisfelner, I'm going to 19 follow your lead for whenever you want 20 breaks; okay? 21 A. Sure. 22 By the way, I don't know why 23 I'm bothering to do this, but we went 24 through a list of what I thought the 25 GUC Trust's obligations were and I</p>	<p style="text-align: right;">Page 49</p> <p>1 Trust, their agreement, as I understand 2 it, reached with General Motors 3 sometime around the 15th or 16th of 4 August was in direct violation of this 5 provision of the agreement, which I 6 think was enforceable as among the 7 parties once the final settlement 8 documents were all signed off on. 9 Q. So is the following statement 10 correct? Since you believe that 11 Exhibit H is presently a binding 12 contract, do you believe that all 13 intended beneficiaries of this contract 14 are now bound by 3.6? 15 A. No, as I just said before, I 16 think the intended beneficiaries of the 17 settlement agreement, i.e. the 18 plaintiffs defined large, could only be 19 bound by the terms of the settlement 20 agreement upon the entry of an 21 appropriate order by the bankruptcy 22 court approving the settlement after 23 notice and an opportunity to be heard. 24 However, I do believe that the 25 signatory parties had different</p>

<p style="text-align: right;">Page 50</p> <p>1 obligations under the terms of 3.6. 2 Q. Is there any -- I'm sorry, 3 were you done? I didn't mean to speak 4 over you. 5 A. Yes. 6 Q. Is there any particular 7 language in 3.6 that you're relying on 8 for your testimony that the intended 9 beneficiaries are not bound by 3.6 10 until after the court enters the notice 11 order? 12 A. I don't know that there's any 13 specific language in 3.6 that leads me 14 to that conclusion other than my 15 general knowledge of how people get 16 bound by bankruptcy court orders. 17 Q. So would you agree with the 18 following statement: Had Exhibit H 19 become a binding contract during the 20 period prior to the approval of the 21 notice order and perhaps thereafter, 22 the intended beneficiaries are not 23 bound by section 3.6? 24 A. I'll do it one more time. 25 Unless and until there is an entry of</p>	<p style="text-align: right;">Page 52</p> <p>1 Take as much time as you want 2 to look at any of this, but I'll just 3 give you my question so you can read it 4 with that in mind. 5 Have you ever seen the 6 attachment to this exhibit which is 7 entitled Settlement Agreement? 8 A. I presume that at or about 9 the time I saw the document that's 10 attached, yes. 11 Q. And did you play some role in 12 drafting it? 13 A. In drafting it? 14 Q. Yes, sir. 15 A. I can't recall. I certainly 16 played a significant role in 17 negotiating it and in formulating it 18 and passing it onto the Akin firm. 19 Q. Do you believe you reviewed 20 this draft before it was sent to the 21 Akin firm? 22 A. I can't recall but I'd be 23 surprised if I hadn't. 24 (Whereupon, an e-mail dated 25 June 9, 2017 was marked Exhibit 5</p>
<p style="text-align: right;">Page 51</p> <p>1 an order approving the settlement 2 agreement, I don't think that any of 3 the intended beneficiaries are bound. 4 And what they were becoming bound to 5 was the release and the waiver 6 provisions. 7 I think the no litigation 8 clause was specifically directed 9 towards the signatory parties with the 10 intended beneficiaries being 11 beneficiaries of that agreement. 12 MR. KARLAN: Could you mark 13 this as Exhibit 4, please. 14 THE WITNESS: Are we done 15 with three? 16 MR. KARLAN: Yes, sir. 17 (Whereupon, an e-mail dated 18 June 6, 2017 was marked Exhibit 4 19 for identification.) 20 Q. Do you have Exhibit 4 in 21 front of you, sir? 22 A. I do. 23 Q. So Exhibit 4 has an e-mail 24 transmittal cover e-mail and then a 25 document attached.</p>	<p style="text-align: right;">Page 53</p> <p>1 for identification.) 2 THE WITNESS: Are we done with 3 this? 4 MR. KARLAN: I'm not going to 5 ask you any more questions about 6 it, but you may keep it in front of 7 you if you wish. 8 Q. Take as much time as you wish 9 to look at Exhibit 5. My question will 10 be: Did you receive this e-mail and the 11 attachment at or about the time it's 12 dated? 13 A. I can't specifically recall 14 but I don't have any reason to doubt 15 it. 16 Q. Okay. 17 Would it have been your -- 18 MR. KARLAN: Withdrawn. 19 Q. Was it your practice to read 20 each iteration of the drafts as they 21 went back and forth? 22 A. Was it my practice to read 23 each iteration? I don't know how to 24 respond to that. I looked at -- it was 25 my practice to review most of it but</p>

<p style="text-align: right;">Page 62</p> <p>1 fifteen of Exhibit H to your 2 declaration. 3 A. You're doing thirteen 4 compared to fifteen? 5 Q. Correct. Just one sentence. 6 This won't take long. 7 For the first sentence of 8 section 3.1 on Exhibit 6, which is the 9 June 15 markup, reads as follows: "This 10 agreement shall become effective and 11 binding on the parties on the date on 12 which this agreement is fully executed 13 by each of the parties." 14 Did I read that correctly? 15 A. You certainly did. 16 Q. All right. 17 The first sentence of section 18 3.1 in Exhibit H to your declaration 19 which you identified as the final 20 agreement reads, "this agreement shall 21 become effective and binding on the 22 parties on the date on which this 23 agreement is fully executed by either 24 of the parties." 25 Did I read that correctly?</p>	<p style="text-align: right;">Page 64</p> <p>1 I think the execution date was also 2 relevant in terms of some of the 3 milestones that were contained further 4 on in the agreement with regard to the 5 timing of obtaining the various orders 6 that the parties were contemplating. 7 Q. Would you agree with me that 8 section 3.1, among other things, says 9 that the agreement is not binding until 10 it's fully executed by each of the 11 parties? 12 A. I agree that the language 13 says what it says. 14 Q. What did you think that 15 language meant? 16 A. I just told you, I thought it 17 was a ministerial step that the parties 18 had contemplated with regard to 19 specifying a date for the running of 20 our milestones within the agreement. 21 Q. That's what you think the 22 word "binding" in that sentence means? 23 MR. WISSNER-GROSS: Asked and 24 answered. 25 Q. Sir?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. You certainly did. 2 Q. Can we agree that between 3 June 15 and whenever you believe in 4 August the agreement was finalized no 5 changes were made in that sentence in 6 any draft? 7 A. I agree. 8 MR. KARLAN: Let's take a 9 five-minute break, please. 10 THE VIDEOGRAPHER: We're now 11 off the record at approximately 12 11:09. 13 (Whereupon a break was taken) 14 THE VIDEOGRAPHER: Back on the 15 record at approximately 11:22. 16 Q. Sir, just before the break we 17 were looking at section 3.1 in what you 18 believe is the final binding agreement 19 and I read you the first sentence. 20 What did you believe that 21 sentence meant? 22 A. I believe it meant that the 23 parties contemplated that, for the 24 reasons I indicated before, the 25 agreement would ultimately be executed.</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Yes. 2 Q. Would you look, please, at 3 Exhibit 1 to today's deposition which 4 is the provisional set of your 5 interrogatories. 6 A. I have Exhibit 1. 7 MS. NEWMAN: Can the people on 8 the phone mute their line, please? 9 THE WITNESS: Mitch, I have 10 Exhibit 1 in front of me. 11 Q. Thank you, sir. 12 Would you look at 13 interrogatory number six which is on 14 page six and then the answer is on page 15 seven. 16 A. I see it. 17 Q. In responding to this 18 interrogatory, was your firm 19 interpreting the word "executed" to 20 mean something other than manually 21 signed in ink? 22 A. I don't know. 23 Q. Can you point to where the 24 signatory plaintiffs executed the 25 contract, that is can you point to the</p>

17 (Pages 62 - 65)

<p style="text-align: right;">Page 66</p> <p>1 document on which that occurs, appears?</p> <p>2 A. I can't.</p> <p>3 Q. What about Mr. Martorana, can</p> <p>4 you point to where he --</p> <p>5 A. I cannot.</p> <p>6 Q. Were you generally -- we're</p> <p>7 done with that. Thank you, sir.</p> <p>8 Were you generally aware that</p> <p>9 the GUC Trust units are publicly</p> <p>10 traded?</p> <p>11 A. Yes.</p> <p>12 Q. Were you generally aware that</p> <p>13 the GUC Trust trustee had reporting</p> <p>14 obligations to the federal government?</p> <p>15 A. Yes.</p> <p>16 Q. Did you try to keep yourself</p> <p>17 abreast of public filings by the trust?</p> <p>18 A. I believe I was kept abreast</p> <p>19 of public filings, yes.</p> <p>20 Q. If the GUC Trust had entered</p> <p>21 into a binding contract such as Exhibit</p> <p>22 H to your declaration, do you have a</p> <p>23 view as to whether it would have been</p> <p>24 required to file either a K or a Q?</p> <p>25 A. I don't have a view one way</p>	<p style="text-align: right;">Page 68</p> <p>1 tell you that the GUC Trust was not</p> <p>2 going to sign any version of Exhibit H</p> <p>3 to your declaration?</p> <p>4 A. I was told that they were</p> <p>5 backing out of our agreement.</p> <p>6 Q. Approximately --</p> <p>7 MR. KARLAN: Withdrawn.</p> <p>8 Q. What's your best recollection</p> <p>9 as to when you were told that?</p> <p>10 A. Oh, boy. I want to say it</p> <p>11 was -- I'm sure you can refresh my</p> <p>12 recollection but my guess it was</p> <p>13 sometime on the fifteenth.</p> <p>14 Q. How did you learn that, that</p> <p>15 is to --</p> <p>16 A. I got a phone call from</p> <p>17 somebody at Gibson Dunn.</p> <p>18 Q. What can you recall was said</p> <p>19 by either you or anyone else on the</p> <p>20 phone during that conversation?</p> <p>21 A. My recollection is hazy other</p> <p>22 than being told that the GUC Trust had</p> <p>23 decided to renege, and I don't recall,</p> <p>24 Mitch, I'm really guessing as to</p> <p>25 whether they told us it was based on an</p>
<p style="text-align: right;">Page 67</p> <p>1 or the other.</p> <p>2 Q. Do you know whether they did</p> <p>3 ever file a disclosure with the federal</p> <p>4 government stating that they had</p> <p>5 reached a final agreement with your</p> <p>6 clients?</p> <p>7 A. I don't remember the exact</p> <p>8 language that they employed in their</p> <p>9 public filings with regard to the</p> <p>10 status of the negotiations among the</p> <p>11 parties. I believe that the last thing</p> <p>12 I saw them publish was that they had</p> <p>13 made -- and this is my words, not an</p> <p>14 exact quote but they had made</p> <p>15 substantial progress towards</p> <p>16 finalization of the agreement.</p> <p>17 Q. And that filing to which</p> <p>18 you're referring was made after the</p> <p>19 date on which you believe the contract</p> <p>20 was final; correct?</p> <p>21 A. I don't recall the dates of</p> <p>22 their public filing relative to when I</p> <p>23 think the agreements had been</p> <p>24 finalized.</p> <p>25 Q. At some point did somebody</p>	<p style="text-align: right;">Page 69</p> <p>1 agreement they had entered into with</p> <p>2 new GM.</p> <p>3 Q. Just so the record is clear,</p> <p>4 I understand and acknowledge your view</p> <p>5 that this constituted a reneging but I</p> <p>6 want the record to be clear nobody on</p> <p>7 the phone used that word; correct?</p> <p>8 A. Oh, I don't know for sure. I</p> <p>9 think they may have said something like</p> <p>10 we're backing out of the agreement.</p> <p>11 They may not have used the word</p> <p>12 "renege." But what I took from that</p> <p>13 conversation was we're backing out.</p> <p>14 Q. Again, you'll certainly have</p> <p>15 the opportunity to tell everybody what</p> <p>16 you took from it but I'm trying to find</p> <p>17 out what you recall being said.</p> <p>18 A. I can't recall the specific</p> <p>19 words.</p> <p>20 Q. Did you say to whomever from</p> <p>21 my firm was on the other end of the</p> <p>22 phone in words or substance we have a</p> <p>23 binding contract, you can't back out?</p> <p>24 A. I can't recall specifically</p> <p>25 what words I used in reaction to the</p>

<p style="text-align: right;">Page 78</p> <p>1 bankruptcy, were you designated by 2 them? 3 A. Yes. 4 Q. Were you designated by any 5 individual plaintiff who may or may not 6 have been -- have had a lawsuit filed 7 or been a member of a putative class? 8 A. My recollection is that the 9 phraseology "designated counsel" first 10 emanated from Judge Gerber, but 11 specifically the answer to your 12 question is other than potentially the 13 putative class representatives, the 14 answer to your question is no. 15 Q. Okay. 16 And you testified in response 17 to one of Mr. Karlan's questions, I 18 think, that through the co-lead counsel 19 you were representing the interests of, 20 at a minimum, the named plaintiffs on 21 the economic loss side of the MDL; is 22 that your understanding? 23 A. That's a fair 24 characterization of my prior testimony 25 and my understanding.</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I hope you meant by that 2 question directly. 3 Q. Yes. 4 A. No. 5 Q. Okay. 6 Did any plaintiffs other than 7 named plaintiffs ever authorize you to 8 conduct settlement negotiations on 9 their behalf and enter into a 10 settlement agreement on their behalf? 11 A. And again you're asking 12 directly? 13 Q. Correct. 14 A. No. 15 Q. You never had any 16 conversations whatsoever or received 17 any authorization whatsoever directly 18 from any plaintiff in any case; 19 correct? 20 A. Not that they identifies 21 themselves as such. I can't tell you 22 who I spoke to that may have owned a GM 23 car and gotten screwed as a 24 consequence. 25 Q. All right.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. That's consistent with your 2 understanding of who you were 3 representing? 4 A. Yes, sir. 5 Q. And when you said at a 6 minimum, were there additional -- were 7 the interests of additional plaintiffs 8 other than the named plaintiffs within 9 the scope of your representation, as 10 you understood it? 11 A. Not that I was specifically 12 aware of at the time or since. 13 Q. Did you ever have any 14 discussions with any of the named 15 plaintiffs? 16 A. No. 17 Q. Did you have any discussions 18 with any plaintiffs who weren't named 19 plaintiffs? 20 A. Not that I'm aware of. 21 Q. Did any of the named 22 plaintiffs ever authorize you to 23 conduct settlement negotiations on 24 their behalf or to sign a settlement 25 agreement on their behalf?</p>	<p style="text-align: right;">Page 81</p> <p>1 Mr. Karlan asked you a number 2 of questions about section 3.2(b) of 3 the settlement agreement. 4 And do you still have 5 Exhibit 3 in front of you? 6 A. I do. 7 Q. And I think it was Exhibit H 8 to -- 9 A. I'm sure it was. 10 And what part of it? 11 Q. The questions were relating 12 to section 2.3(b) which is the -- 13 A. 2.3(b)? 14 Q. Yes, which is the release 15 language of the document. 16 A. Yes. 17 Q. Let me know when you're 18 there. 19 A. "Contains a provision which." 20 Go ahead. 21 Q. Yes. 22 And Mr. Karlan was asking you 23 specifically about -- I believe about 24 the form of the order that was to be 25 entered and he asked you, among other</p>

21 (Pages 78 - 81)

<p style="text-align: right;">Page 82</p> <p>1 things, what authority you had to give 2 a release. 3 Do you recall those 4 questions? 5 A. No. Why don't you ask me a 6 direct new question. 7 Q. What authority did you have 8 to enter into an agreement pursuant to 9 which plaintiffs -- 10 MR. WERDER: Withdrawn. 11 Q. You didn't have an 12 attorney-client relationship with any 13 individual plaintiffs who were members 14 of a putative class and not the named 15 plaintiffs; did you, sir? 16 A. Not to my knowledge. 17 Q. All right. 18 So who -- where did you 19 believe that you derived authority to 20 enter into an agreement that would 21 result in such plaintiffs giving a 22 release? 23 A. I'm going to answer the 24 question but first I want to interpose 25 my own objection given my counsel's</p>	<p style="text-align: right;">Page 84</p> <p>1 him not to answer a question that 2 is phase two-related. You can ask 3 any and all questions relating to 4 the phase one issues. 5 THE WITNESS: Let me see if I 6 can't answer your question as it's 7 relevant to phase one. 8 Q. Good. 9 A. The plaintiffs' side of this 10 equation believes that it had authority 11 to negotiate and enter into this 12 settlement agreement derived from any 13 number of sources, both the lead 14 counsel's direct relationship with 15 their underlying clients as well as 16 various orders that were entered by 17 judge fur plan in the MDL. That's 18 where I thought I derived my authority 19 to negotiate and enter into the 20 settlement agreement. 21 Q. So you derived your authority 22 derivatively from the co-lead counsel 23 in the MDL? 24 A. I believe that's correct. 25 Q. And no plaintiff ever</p>
<p style="text-align: right;">Page 83</p> <p>1 lack of familiarity with the 2 background. 3 Can you help me understand 4 how this is a phase one issue that's 5 relevant for phase one? How your last 6 question is a phase one relevant 7 question as opposed to a phase two 8 relevant question? 9 Q. Well, I don't think I have to 10 explain it. 11 A. Okay. 12 Then I direct myself not to 13 answer. 14 Q. Before you interrupted me, I 15 was going to explain it even though I 16 don't think I have to and the question 17 of whether persons who purported to 18 enter into a binding settlement 19 agreement had authority to do so is 20 clearly part of whether there is a 21 binding settlement agreement. 22 MR. WISSNER-GROSS: To the 23 extent you're getting into phase 24 two issues, and I thank the witness 25 for refreshing me, I'm instructing</p>	<p style="text-align: right;">Page 85</p> <p>1 requested directly that you negotiate a 2 settlement agreement that would 3 ultimately result in a release of their 4 rights; correct, sir? 5 A. Me personally, the answer to 6 your question is no, no plaintiff ever 7 directed me or instructed me. 8 Q. Let's take a look, if we 9 could, at Exhibit 6. 10 A. I'm there. 11 Q. And in particular if we look 12 at the top of the attached redline of 13 the settlement. 14 A. Bates 968? 15 Q. Correct. 16 A. Yes. 17 Q. And I think you testified 18 previously that you understood this to 19 be the redline that your firm was 20 sending back -- a redline that your 21 firm was sending back to Akin Gump and 22 to Gibson Dunn; correct? 23 A. Yes. 24 Q. And in the redline, and this 25 is using some standard Brown Rudnick</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 redlining program; correct? 2 A. I don't know. I guess so. 3 Q. And in the redline, is it 4 consistent with your understanding that 5 the title of the document Brown Rudnick 6 Comments 6/15/17 is replacing what 7 previously would have been on the 8 redline draft GDC and AGSHF Initial 9 Comments 6/9/17? 10 A. I believe so. 11 Q. So from that redlining, would 12 you infer that the comments that Mr. 13 Steel is sending back are comments on 14 the June 9, '17 draft that -- 15 A. I'd infer that but I couldn't 16 swear to it because again I'm uncertain 17 how the program works and whether there 18 were any intervening drafts and that 19 the redline just didn't reflect that 20 there were comments on the last draft. 21 I don't have any reason to doubt the 22 implication of your question, that 23 being that this reflects our comments 24 to the Gibson Dunn/Akin draft of six 25 days earlier.</p>	<p style="text-align: right;">Page 88</p> <p>1 personally became aware of that? 2 A. No. I don't think I -- I 3 don't think that the inclusion of that 4 provision was much of a moment to any 5 of us other than representing 6 boilerplate language. 7 Q. So it wasn't very important 8 to you? 9 A. No. 10 Q. Did you personally have any 11 discussions of the language in section 12 3.1 with anyone from Akin or Gibson 13 Dunn? 14 A. Ever? 15 Q. Ever. 16 A. In connection with this 17 litigation, yes. But before the 18 litigation, not that I can recall. 19 Q. And when you say before the 20 litigation, you're referring to 21 sometime after August 17? 22 A. Yes, sir. 23 Q. So at no time prior to 24 August 17 did you have any discussion 25 of section 3.1 with anyone from Akin or</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. All right. 2 And that draft I think was 3 Exhibit 5. 4 Do you still have that in 5 front of you? 6 A. There it is. I have it, yes. 7 Q. All right. 8 And I think, based on your 9 prior testimony in response to Mr. 10 Karlan's questions, we're all agreed 11 that section 3.1 as in the documents 12 that were ultimately submitted to the 13 court came into the draft pursuant to 14 the comments of Akin and Gibson Dunn on 15 June 9; correct? 16 A. I think that's correct. 17 Q. So your team became aware of 18 the desired addition of section 3.1 on 19 or about June 9; correct, sir? 20 A. At or about the receipt of 21 this markup, there was inserted for the 22 first time the settlement effective 23 dated concept, yes. 24 Q. Okay. 25 Do you recall when you</p>	<p style="text-align: right;">Page 89</p> <p>1 Gibson Dunn; correct? 2 A. Not that I can recall, no. 3 Q. All right. 4 And leaving aside 5 conversations that you personally 6 didn't have, are you aware of any 7 discussions concerning section 3.1 8 prior to the litigation using the 9 marker that we previously laid on that 10 between your team at Brown Rudnick and 11 anyone from Akin or Gibson Dunn? 12 A. Not that I can recall. 13 Q. And you agree, do you not, 14 that your team accepted the proposed 15 addition of section 3.1 into the 16 settlement agreement? 17 A. 3.1 is reflected in the final 18 settlement agreement, yes. 19 Q. And it's reflected in the 20 final settlement agreement because, 21 among other things, after it was 22 proposed by Akin and Gibson Dunn, your 23 team accepted it; correct? 24 A. Everyone accepted all of the 25 terms including that term, yes.</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 Q. And that terms remained in 2 all subsequent drafts of the agreement 3 and was never changed; correct? 4 A. As best as I can recall, 5 correct. 6 Q. Did anyone ever tell you that 7 they intended a settlement agreement to 8 become effective and binding before it 9 was signed by all the parties? 10 A. In words or substance, sure. 11 Q. In words how about, first of 12 all, did anybody ever tell you in words 13 to the effect that I intend this 14 particular version of the settlement 15 documents to be effective and binding 16 despite the fact that it was not signed 17 by all the parties? 18 A. Rick, I don't think anybody 19 articulated it just the way you just 20 did, but we were clearly of the 21 impression given to us by lawyers at 22 Gibson Dunn and, for that matter, 23 lawyers at Akin that we were finished, 24 that we could go ahead and brief new 25 GM's counsel about where we were going,</p>	<p style="text-align: right;">Page 92</p> <p>1 counsel for new GM? 2 A. I'm referring to that among a 3 lot of other things, but I take issue 4 with how you articulated a question. 5 When the documents were 6 approved for submission or 7 communication to new GM, it was all the 8 documents, not some of the documents, 9 and we had gotten indication from the 10 GUC Trust preceding that, in particular 11 we got the signoff from Gibson Dunn 12 that we could go ahead and have a 13 conference call. When I say we, Danny 14 Golden and I could have a conference 15 call with Art and Andrew Bloomer. 16 Q. Okay. 17 And that was before 18 August 14; correct? 19 A. As far as I know, the 20 conversation we had with Arthur and 21 Andrew was on the ninth, so that was at 22 least one of the numerous indications 23 we got that we were done. 24 Q. Well, was it your 25 understanding then that, as of the time</p>
<p style="text-align: right;">Page 91</p> <p>1 that we could arrange for a status 2 conference on a date specific, and that 3 we could get new GM a full set of the 4 documents in advance of that hearing. 5 Q. All right. We'll talk about 6 that exchange momentarily. 7 But the answer to my question 8 was nobody ever told you in words 9 approximating the words that I intend 10 this particular version of draft 11 settlement documents to become 12 effective and binding prior to the time 13 it was signed by all the parties; 14 correct, sir? 15 A. Again, I think we're mincing 16 words. No one ever used that 17 articulation, to my knowledge, in an 18 oral statement. But I think in writing 19 and in deeds they were communicating 20 that the settlement was final and 21 enforceable. 22 Q. And are you referring to the 23 communications on August 14 that 24 resulted in some of the draft 25 settlement documents being sent to</p>	<p style="text-align: right;">Page 93</p> <p>1 that you first picked up the phone or 2 got on the phone with counsel for new 3 GM on the ninth, that there was an 4 effective and binding settlement 5 agreement? 6 A. I think whether we had an 7 effective or a binding settlement 8 agreement is probably a matter of law. 9 The fact of the matter is that, as of 10 the ninth, we were -- my terminology -- 11 virtually done. I think we had some 12 nits on a couple of open issues. There 13 was one open issue that remained 14 between Akin and Gibson. I can't even 15 recall off the top of my head what it 16 was. And I think, you know, people 17 wanted to go through one more page 18 turn, all-hands page turn, just to sign 19 off on all of the documents. But every 20 material term of the deal was done 21 before Danny and I got a green light 22 from everybody to talk to Art and 23 Bloomer. 24 Q. And no party had said prior 25 to that page turn meeting that you</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 98</p> <p>1 or no question?</p> <p>2 MS. NEWMAN: Objection.</p> <p>3 THE WITNESS: It's not a yes</p> <p>4 or no question.</p> <p>5 MR. WISSNER-GROSS: Asked and</p> <p>6 answered.</p> <p>7 Q. Can you answer that question</p> <p>8 yes or no?</p> <p>9 A. Let's hear it again.</p> <p>10 Q. Prior to the page turn</p> <p>11 meeting on the eleventh --</p> <p>12 A. I have to interrupt you.</p> <p>13 We're accepting the proposition that</p> <p>14 the page turn was on the eleventh;</p> <p>15 that's probably right. But sitting</p> <p>16 here today I'm certain it's right. But</p> <p>17 I'm going to accept that date as part</p> <p>18 of the proposition of your question.</p> <p>19 Q. I'll withdraw the date.</p> <p>20 Prior to the page turn</p> <p>21 meeting or conference call that you</p> <p>22 previously referenced, did anybody tell</p> <p>23 you that they regarded the version of</p> <p>24 the settlement documents that existed</p> <p>25 at the start of that meeting to be</p>	<p style="text-align: right;">Page 100</p> <p>1 in any discussions you had with the GUC</p> <p>2 Trust?</p> <p>3 A. Not that I can recall</p> <p>4 specifically.</p> <p>5 Q. The settlement agreement was</p> <p>6 intended to be governed by New York</p> <p>7 law; am I right?</p> <p>8 A. Yes.</p> <p>9 Q. And there was never any</p> <p>10 debate over that; was there?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. And in fact, New York law was</p> <p>13 specifically provided for in one of the</p> <p>14 terms; correct?</p> <p>15 A. The best of my recollection,</p> <p>16 yes.</p> <p>17 Q. Are you familiar with</p> <p>18 CPLR 2014?</p> <p>19 MR. WISSNER-GROSS: Now I</p> <p>20 think that goes beyond the scope of</p> <p>21 this deposition.</p> <p>22 MR. WERDER: I don't think so.</p> <p>23 Q. Are you familiar with it?</p> <p>24 A. I think in connection with</p> <p>25 trial preparation and in reviewing case</p>
<p style="text-align: right;">Page 99</p> <p>1 binding and effective settlements</p> <p>2 documents?</p> <p>3 MS. NEWMAN: Objection.</p> <p>4 THE WITNESS: It's my belief</p> <p>5 that the answer is yes. And not in</p> <p>6 so many words but yes, we were I</p> <p>7 think all of us under the</p> <p>8 impression that we had a final</p> <p>9 binding deal subject to dotting and</p> <p>10 I's and crossing the T's, so yeah,</p> <p>11 in my view, as of the eleventh or</p> <p>12 whenever that page turn was, we had</p> <p>13 a final agreement that was being</p> <p>14 flyspecked for commas and</p> <p>15 semicolons and nothing substantive.</p> <p>16 Q. When you refer to all of us</p> <p>17 in your prior language, are you</p> <p>18 purporting to say what impression the</p> <p>19 representatives of the GUC Trust were</p> <p>20 under?</p> <p>21 A. Yes.</p> <p>22 Q. You used the phrase</p> <p>23 "ministerial step" several times in</p> <p>24 your deposition testimony.</p> <p>25 Did you ever use that phrase</p>	<p style="text-align: right;">Page 101</p> <p>1 law, I know I've seen reference to the</p> <p>2 CPLR, the specific number, no, and I</p> <p>3 don't purport to be an expert or have a</p> <p>4 photographic memory as to what it</p> <p>5 provides.</p> <p>6 Q. Thank you.</p> <p>7 (Whereupon, an e-mail dated</p> <p>8 July 28, 2017 was marked Exhibit 8</p> <p>9 for identification.)</p> <p>10 THE WITNESS: Can you identify</p> <p>11 it for the people on the call?</p> <p>12 Q. Yes.</p> <p>13 I've marked as Exhibit 9 --</p> <p>14 A. Actually, it's eight on mine.</p> <p>15 Q. I've marked as Exhibit 8 a</p> <p>16 document that begins GUC 0003459 and</p> <p>17 runs through 3519. And the first</p> <p>18 document in the chain is a July 28,</p> <p>19 2017 e-mail from Mr. Martorana to</p> <p>20 multiple people. It's not the one that</p> <p>21 I want to ask you about.</p> <p>22 Review whatever you want on</p> <p>23 this, Mr. Weisfelner. What I want to</p> <p>24 ask you about is the e-mail that begins</p> <p>25 at the bottom of page Bates numbered</p>